IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE FIFTEENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION No. 15670 of 2004

Between:

1 A. Hanumantha Reddy, S/o. Ram Reddy,

aged 42 years, Occ: Clerk,
Tandoor Kichannapeta PACS Nagireddypeta Mandal,

Nizamabad District.
2 D. Prabhakar, S/o. Narayana,

Aged 38 years, Occ: Clerk
Tandoor Kichannapeta PACS Nagireddypeta Mandal,

Nizamabad District.
3 Ch. Srinivasulu, S/o. Venkata Ramulu,

Aged 39 years, Occ: Salesman,
Tandoor Kichannapeta PACS Nagireddypeta Mandal,

Nizamabad District.
4 D. Chandra Murali, S/o, Balaiah,

Aged 38 years, Occ: Cashier/Clerk
Tandoor Kichannapeta PACS Nagireddypeta Mandal,

Nizamabad District.
5 S. Mahipal Reddy, S/o. Raji Reddy,

Aged 36 years, Occ: Salesman
Tandoor Kichannapeta PACS Nagireddypeta Mandal,

Nizamabad District.
6 C.P. Vittal Reddy, S/o. Mogil Reddy,

Aged 45 years, Occ:Clerk
Tandoor Kichannapeta PACS Nagireddypeta Mandal,

Nizamabad District.

..... PETITIONERS

AND

1 The Commissioner for Cooperation, Government of A.P., Hyderabad.
2 The District Cooperative, Nizamabad District at Nizamabad.
3 The Divisional Cooperative Officer, Kamareddy, Nizamabad District.
4 The Tandoor Kichannapeta PACS, Nagireddypeta Mandal,

Nizamabad District, rep by its Chairman/PIC

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the impugned action of the Respondents 2 and 3 in issuing directions for terminating the petitioners from the services and the consequential action of the 4th respondent in issuing impugned proceedings dated 3-8-2004 is highly illegal and arbitrary and violative of the Articles 14 and 21 of the constitution of India and also principles natural justice apart from contrary to the provisions of A.P.C.S. Act.

Counsel for the Petitioner: MR.G.V.SHIVAJI

Counsel for the Respondent Nos.1 to 3: GP FOR COOPERATION

Counsel for the Respondent No.4;

The Court made the following:

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ORDER:

Challenging the impugned proceedings dated 03.08.2004 in terminating the services of the petitioners, the writ petition is filed.

The 1st petitioner was appointed as a Clerk and petitioners 2 to 6 were initially appointed as Salesmen in the

4th respondent society, and thereafter, they were promoted. The turn over of the Society is Rs.4,96,55,468/- and there are 5,300 members in the society. All of a sudden, the

4th respondent issued the impugned proceedings dated 03.08.2004 terminating the petitioners with effect from 02.09.1994 in view of the ceiling limit imposed on the staff pattern by G.O.Ms.No.94, dated 28.02.2004. As per G.O.Ms.No.94, when the deposits are more than two crores, the society specifically allowed to have the staff strength exceeding those suggested in the G.O. Hence the present writ petition.

The 3rd respondent filed a counter affidavit stating that the action of the 4th respondent is followed in terms of G.O.Ms.No.94, dated 28.02.2004 and also strictly in accordance with the provisions under Section 116 (c) of the A.P.Cooperative Societies Act, 1964 (for short 'the Act'). Considering the financial position and the present loss of 20 lakhs and considering the G.O.Ms.No.94, dated 28.02.2004, the 4th respondent decided to terminate the services of the petitioners in order to save the society from incurring heavy loss. The society is running in loss due to heavy establishment cost. Considering the business of the society, present strength of ten employees is not necessary. The staffing pattern was not approved by the Registrar of the Cooperative Societies. The petitioners have been given one month notice. Hence the 3rd respondent prays to dismiss the petition.

The 4th respondent filed a counter affidavit, denying the turnover of the society as Rs.4,96,55,468/-, but stated that the turnover of the society is Rs.3,27,47,807/-. The previous management of the society appointed ten employees in the Society in violation of Sec.116 (c) of the Act and the staffing pattern was not approved by the Registrar. As the Society is running on nearly 20 lakhs loss, it is not in a position to fulfil the norms of the Sec.116 (c)(1) of the Act, and therefore, the society is proposed to obtain loans from the District Cooperative Central Bank in terms of G.O.Ms.No.94, dated 28.02.2004. Even the loan amount is not sufficient to meet the cost of salaries of the existing ten employees. Therefore, the society resolved to terminate the excess staff in order to save the society from further loss. Notices were issued to the petitioners, and two petitioners have been received the notice and the remaining four petitioners have refused to receive the same. Therefore, the 4th respondent prays to dismiss the writ petition.

Under G.O.Ms.No.308, dated 19.11.2003, the Government exempted the Primary Agricultural Cooperative Societies from the provisions under Section 116 (c) of the Act and Rule 29 of the said Rules in the following manner:

> "1. All Primary Agricultural Cooperative Societies which do not have gross profit are exempted from the operation of Section 116-C of the APCS Act for 3 years from the date of issue of this order.
>
> 2. All Primary Agricultural Cooperative Societies which have nominal gross profit which is not sufficient to meet the expenses of pay and allowances of at least one employee are also exempted from the provisions of Sec.116-C of the APCS Act and Rule-29 of APCS Rules for 3 years."

So also the exemption is given in terms of Section 131 of the Act subject to the following conditions:

> "1. The PACS, having no gross profit or gross profit less than Rs.50,000/- calculated in accordance with the rules,shall apply to the DCO concerned along with an action plan indicating how they plan to improve their financial position over a period not exceeding 3 years and thereby comply with Section 116-C of the APCS Act within that duration.

2. The exemption shall be given for a period of 3 years i.e. for the years 2003-04, 2004-05 and 2005-06.

3. The PACS in this category shall not employ more than 1 person and the total cost of management of PACS shall not exceed Rs.50,000/- per year. Depending on the workload they may employ a person on part time basis or contract basis or on seasonal basis.

4. The PACS should produce before the DCO a proof of sanction of loan from higher financial agency towards meeting the cost of 1 person employed by them."

Considering the financial position of the society, the 4th respondent passed the impugned resolution dated 03.08.2004. As the pay scales of the employees who are working in the society are exceeding 2% on the working capital and 30% of the gross profit, the society is not in a position to expend the salaries, and therefore, taking into account the G.O.Ms.No.94, dated 28.02.2004, the Committee resolved to remove the surplus staff.

According to the 4th respondent, the turnover of the society is Rs.3,27,47,807/- and the society is running on nearly 20 lakhs loss and it is not in a position to fulfil the norms of Sec.116 (c) of the Act. As per G.O.Ms.No.94, dated 28.02.2004, the 4th society is proposed to obtain loan from the District Cooperative Central Bank, and even if that loan amount is taken into consideration, it is not sufficient to meet the cost of the salaries of the existing ten employees. The said fact is not denied by the petitioners by filing a reply affidavit.

For implementation of Sec.116 (c)(1) of the Act and G.O.Ms.No.94, dated 28.02.2004, the society has no option to take steps for removal of the excess staff. As per provisions under Section 116 (c)(1) of the Act, the society has to maintain the establishment costs to a level of 2% working capital and 30% of gross profits in terms of accruals in a year whichever is less. Admittedly, the Society is running in loss to a tune of Rs.20 lakhs. G.O.Ms.No.94, dated 28.02.2004 and G.O.Ms.No.308, dated 19.11.2003 were made to minimize the expenditure on the staff so as to become eligible to draw loans from the District cooperative Banks to meet the salaries of

the staff. If the Society continues with the present strength of ten members, the Society will never fulfil the statutory provisions under Section 116 (c)(1) of the Act. The validity of
Sec.116 (c)(1) of the Act was upheld by this Court in W.A.No.32 of 2003. So, terminating the services of the petitioners cannot be said to be contrary to the provisions of Section 116 (c)(1) of the Act and also under G.O.Ms.No.94, dated 28.02.2004. The impugned termination orders do not suffer from any legal infirmities so as to call for interference by this Court. Therefore, the writ petition is totally devoid of merit and is liable to be dismissed.

The Writ Petition is, accordingly, dismissed. No order as to costs.

Dated: 15.12.2004

Dsr

ASSISTANT REGISTRAR

To:

1. The Commissioner for Cooperation,

Government of A.P.Hyderabad

2. The District Cooperative Officer,

Nizamabad District at Nizamabad

3. The Divisional Cooperative Officer,

Kamareddy, Nizamabad District

4. The Chairman/PIC,

The Tandoor Kichannapeta PACS,

Nagireddypeta Mandal,

Nizamabad District

5. Two CCs to the Government Pleader

for Cooperation, High Court Buildings,

Hyderabad (OUT)

6. Two CD copies.